

Appl. No. 10/539,895  
Reply to Office Action of March 28, 2008  
Attorney Docket 18064

### **REMARKS/ARGUMENTS**

Claims 1-13 are currently pending for examination. Claims 1 and 8 are currently amended claim 13 was added. No new matter has been added.

#### **Objection to Specification**

Applicants have amended the specification to correct previous errors in the identification and description of the Figures, particularly regarding Fig. 5 and Fig. 6. Applicants submit that the errors have been corrected and request this objection be removed.

#### **Rejection of Claims 35 U.S.C. §112**

Claim 1 was rejected under 35 U.S.C. 112 as indefinite for failing to particularly point out and distinctly claim the subject matter. Applicants have amended claim 1 to remove language indicating a plate of variable thickness. Claim 1 now indicates that the thickness of the rear end plate mounted to the grader is dependent on the weight of a rear mounted implement such that the rear end plate exhibits a small wall thickness in use with a rear-mounted piece of equipment of a high weight or the rear end plate exhibits a greater wall thickness in use with a rear-mounted piece of equipment of a low weight or without any rear-mounted equipment. Applicants respectfully request removal of this rejection.

#### **Rejection of Claims under 35 U.S.C. §103**

Claims 1 – 7 were rejected by the previous Office Action under 35 U.S.C. §103 as obvious in view of U.S. Patent No. 4,580,811 to Whykhuis.

Claim 1 recites a road grader having a combined bumper and rear counterweight comprised of a generally flat elongate rear end plate which mounts to the rear end of the frame of the grader. The rear end plate exhibits a small wall thickness in use with a rear-mounted piece of equipment of a high weight. A rear end plate exhibits a greater wall thickness in use with a rear-mounted piece of equipment of a low weight or without any rear-mounted equipment. The invention of claim 1 improves the axle load distribution

Appl. No. 10/539,895

Reply to Office Action of March 28, 2008

Attorney Docket 18064

In contrast, Wykhuis discloses a rear counterweight assembly for a vehicle with an implement mounted to its forward end, wherein the counterweight is incorporated into the rear bumper assembly and includes counter rectangular weights having notched lower edges that can be received on bumper mounting rods which are received in holes in the rear of the vehicle. The ends of the rods inserted into the frame are threaded so that they can be secured by nuts on the inner side of the frame. While the counterweight of Wykhuis can be increased, the reference does not disclose altering the thickness of a rear plate that acts as both the counterweight and bumper in relation to the presence and weight of an attached towed rear implement to maintain the optimum axle load distribution between the front wheels and a tandem rear axle. Wykhuis further does not disclose that a towed implement can be attached to the rear of the vehicle only that it is adapted for mounting an implement on the forward end. Wykhuis therefore not does not disclose or suggest all of the elements of claim 1.

Claims 2-7 depends directly from claim 1 and is allowable for at least the same reasons as claim 1. Accordingly, allowance of claims 1-7 is respectfully requested.

Claim 2 is further separately patentable as it recites that the rear end plate which comprises both the bumper and the rear counterweight is one piece. Alternatively, Wykhuis discloses a bumper section (30) that is separate from the removable counter weights (52) that the bumper retains such that the counter weight assembly is formed from multiples pieces. The counterweights can also be replaced additional spacers sections as shown in Fig. 2 of Wykhuis, which adds additional complexity to the design.

Claims 8-10 were rejected under 35 U.S.C. §103 as obvious in view of U.S. Patent No. 3,853,231 to Luttrell.

Claim 8 recites a road grader having a generally flat elongate rear end plate jointed to the rear end of frame. The rear end plate constitutes the rearmost part of the rear frame and extending generally the width of the road grader. The rear end plate further has apertures to improve the travel of components of rear-mounted equipment mounted to the frame of the grader through a portion of the plate.

Appl. No. 10/539,895

Reply to Office Action of March 28, 2008

Attorney Docket 18064

Additionally, the generally elongate rear end plate has a small wall thickness when rear mounted equipment is installed.

In contrast, Luttrell discloses a work vehicle having a ground engaging blade and a rear counterweight that is removably insertable into an opening in the vehicle frame. A second counter weight can then be secured over the opening which houses the first counter weight by fasteners. Luttrell discloses a lug and retaining pin for attaching an implement for towing portions but is not recessed for permitting the travel of a trailed implement attached to the vehicle. Luttrell further does not disclose or suggest mounting a thinner rear plate based on the weight of a towed rear implement to improve the axle load distribution. Luttrell therefore not does not disclose or suggest all of the elements of claim 1.

Claims 9 and 10 depend either directly or indirectly from claim 8 and are allowable for at least the same reasons as claim 8. Accordingly, allowance of claims 8-10 is respectfully requested.

Claim 9 is further separately patentable as it recites that the rear end plate which comprises both the bumper and the rear counterweight is one piece. Alternatively, Luttrell discloses a bumper section having a counterweight (48) that is separate from a second removable counter weight (35) that is stored in an opening within the frame. Luttrell does not disclose a single piece bumper and counterweight who thickness is altered based on the presence and weight of a towed rear implement.

Claim 11 was rejected by the previous Office Action under 35 U.S.C. §103 as obvious in view of Luttrell in further view of Wykhuis.

Claim 11 depend directly from claim 8 and is allowable for at least the same reasons as claim 8.

Claim 12 was rejected by the previous Office Action under 35 U.S.C. §103 as obvious in view of Luttrell in further view of Wykhuis and U.S. Patent 3,490,787 to Latterman.

Claim 12 depends from claim 8 and is allowable for at least the same reasons as claim 8.

Appl. No. 10/539,895  
Reply to Office Action of March 28, 2008  
Attorney Docket 18064

**New Claim 13**

Claim 13 was added reciting that thickness of the rear end plate used is dependent upon the presence and weight of an attached piece of equipment to achieve an improved axle load distribution.

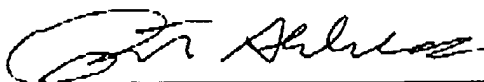
As discussed above neither Luttrell nor Wykhuis disclose altering the thickness of a rear end plate, which serves as a counterweight and a bumper based on an attached implement. As claim 13 is not disclosed or suggested by the prior art, a notice of allowance is respectfully requested.

**Conclusion**

It is submitted that claims 1-13 define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

No fee is believed due with this communication. Nevertheless, should the Examiner consider any fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 14-0780. The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted;



Patrick M. Shel Drake  
Attorney for Applicant(s)  
Reg. No. 60,411  
Date: March 28, 2008

(717) 355-4954 Phone  
(717) 355-3107 Fax